

Schism is defined as “[a] basic intraunion conflict over policy at the highest level of an international union or within a federation which results in a disruption of existing intraunion relationships; and the employees seek to change their representative for reasons related to such conflict resulting in such confusion in the bargaining relationship that stability can only be restored by an election.” In a schism case, the petitioner generally asserts that the intra-union conflict constitutes the type of unusual circumstances which justifies the filing of an election petition during a contract bar period or which justifies severance of a group of employees from a larger appropriate unit.

Standard: *Department of the Navy, Pearl Harbor Naval Shipyard Restaurant System, Pearl Harbor, Hawaii (Pearl Harbor)* 28 FLRA 172 (1987) is the first and only case considered by the Authority on the merits of schism. In that case, the Authority adopted private sector case law as a guide in rendering his decision. Citing *Hershey Chocolate*, 121 NLRB 901, (1958), the Authority adopted NLRB precedent in determining whether an asserted schism existed.

In *Hershey Chocolate*, 121NLRB 901, the NLRB established three conditions that must be present to find that a schism exists:

1. There must be a basic intra-union conflict affecting the certified representative. A basic intra-union conflict is any conflict over policy at the highest level of an international union, whether or not it is affiliated with a federation, or within a federation, which results in the disruption of existing intra-union relationships. *Hershey Chocolate* 121NLRB at 907.
2. Employees in the unit seek to change their bargaining representative for reasons related to the basic intra-union conflict and have an opportunity to exercise their judgment on the merits of the controversy at an open meeting, called with due notice to the members in the unit for the purpose of taking disaffiliation action for reasons related to the basic intra-union conflict. *Hershey Chocolate* 121NLRB at 908.
3. The action of the employees in the unit seeking to change their representative took place within a reasonable time after the occurrence of the basic intra-union conflict. *Hershey Chocolate* 121NLRB at 908.

For detailed guidance on this topic see RCL 8.

Relevant information:

In addition to evidence of exclusive recognition, the record in a schism case includes all basic information involved in a contract bar case. See section 48 - Timeliness, for a discussion of contract bar issues. Other relevant information in a schism case includes documents and testimony showing:

- 1) the nature of and the reasons for the internal conflict asserted as evidence of schism; to what extent did the employees' dissatisfaction with the collective bargaining agreement influence the internal conflict?
- 2) what is the highest level of the national or international union involved and at what level did the internal conflict occur?
 - a) What was the nature of the internal conflict?
 - b) What was the fundamental policy question?
- 3) the nature and extent of any action taken by employees in the unit based on the conflict, specifically as to the realignment, disaffiliation or expulsion of unit members from the incumbent labor organization.
- 4) if disaffiliation has occurred, was a special meeting held to discuss and vote on the disaffiliation issue?
 - a) in what manner and when were the members notified of the meeting? When was the meeting held?
 - b) description of the discussion at the meeting.
 - c) numbers of members at the disaffiliation meeting as compared to attendance at previous, regularly held meetings of the incumbent. Numbers of employees in the unit at the time of the disaffiliation action. Was the meeting limited to members of the union or could any member of the bargaining unit attend?
 - d) the proposition voted upon at the disaffiliation election, including a copy of the ballot, if available. Results of any disaffiliation vote, including documentation of actual tally, if available.

- e) description of which, if any, of the former officers of the incumbent were elected or appointed to offices in petitioner's organization.
 - f) whether a new charter was issued to the petitioner and, if so, when the charter was issued, including a copy of the document, if available.
 - g) number and nature of grievances handled by the petitioner on behalf of employee(s) in the unit. Identical information for the incumbent.
 - h) the dates of meetings conducted by the petitioner since disaffiliation, including average numbers of members in attendance at each meeting. Identical information for the incumbent.
 - i) the numbers of members on dues deduction for the petitioner. Identical information for the incumbent.
 - j) the numbers of stewards acting on behalf of the petitioner. Identical information for the incumbent.
 - k) details of the election or appointment of new officers, whether by the petitioner or the incumbent.
 - l) description of the nature and extent of confusion in the bargaining relationship caused by the internal conflict, including testimony on this point from the agency as well as the petitioner and incumbent.
 - m) if members have been expelled, the Hearing Officer obtains documents and testimony from **all** affected groups as to the events involved in the expulsion.
- 5) What was the length of time between the alleged intra-union conflict and the movement to sever the relationship?

